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In the Superior Court for the State of Alaska at Anchorage

Media No.: 3AN5306-229

Judge: Wolverton

Date: Tuesday, December 12, 2006

Clerk: R. Collins

Plaintiff: State of Alaska vs.

Defendant's Name:  
Patrick Shorty

Case No:  
3AN-03-7796CR

DOB:  
10/2/69

Address:

Type of Proceedings: Further Proceedings

Counsel Present: Plaintiff: Erin White, Asst District Attorney  
Defendant: Leslie Hiebert, Office of Public Advocacy

Defendant: Present, In Custody

Bail Set/Continues: non-bailable per statute		
Transport Order:		
Other Court Orders:		
Next Court Date(s) and Time(s): 3/13/07 2:45 p.m. <PS>	Type of Hearing(s): Sentencing	Location: Anch 503

Summary of Proceedings: M.O. Denying Deft's Motion for Judgment of Acquittal Notwithstanding the Verdict on Count 3 and 4

4:06:34 PM Court identifies case and parties

Ms Hiebert

- motion for judgment of acquittal
- notwithstanding the verdict
- Resisting and Assault
- arrest set out by statute
- peace officer entitled to make arrest, taking into custody to answer commission of crime
- if held someone has identified the crime you are being arrested
- requirement you inform the person w/o warrant of officer's authority and cause for arrest
- peace officer shall inform
- exception only if engaged in crime or during escape

4:08:28 PM

- make arrest for person of crime, informed them for reason of arrest, person knows
- that didn't happen here
- other parts applicable w/o warrant you can arrest for felony or misd committed in your presence
- b/c officers weren't taking him into custody for sexual assault, but to answer misd committed
- testimony regarding authorization for arrest
- improper or it can't be argued fairly under the law he was under arrest for sexual assault
- if he was, they shd have told him he was under arrest for sexual assault
- when you get to statute involving resisting and privilege to use force, kind of crime matters
- can't use deadly force if arresting for misd

4:10:32 PM Court

- you can use amt of force necessary

Ms Hiebert

3AN-03-7796CR 12-12

4:13:20 PM

<reads from statutes>  
-stop and locate  
-not arrest for sexual assault  
-person has privilege to use force in resisting when use of force by police excessive  
-excessive force for arrest on misd  
-officer didn't believe he was arresting him for sexual assault, but for misd  
-laws we look to when officer gets injured during arrest  
-immunity statutes for the officers  
-restricts and restrains officer's conduct, minimal injury, informed of arrest for crime and what crime it is  
-unless Shorty's decision not resist and whatever happened to him he deserved limited to these statutes  
-assault 4 requires recklessly caused phys injury  
-injury to police officer a little different, he initiated use of force  
-they lay hands on him and they're privileged to do so  
-you can to be a peace officer to do that  
-unwanted contact that can easily lead to resistance among civilians  
-same privileges includes restraints

4:17:19 PM

Court  
-don't agree it was permitted  
-no basis for resisting  
-you don't get to do that in society

Ms Hiebert  
-resist excessive use of force

Court  
-can't resist guide by hand from police officer

Ms Hiebert  
-resisting lawful detention

Court  
-they knew he'd given false info

Ms Hiebert  
-require to look at degree of force used

Court  
-and the degree of resisting before force is used  
-what if he went bonkers, they didn't have time to say anything  
-put hand on him, they were down on the ground headed for alleyway

4:19:12 PM

Ms Hiebert  
-law requires inform person of arrest

Court  
-I quoted from case law, generally speaking and not in all circumstances  
-they didn't have opportunity to  
-they have to inform, but they don't have to when someone acts unreasonably

Ms Hiebert  
-he was ordered to return  
-on policy grounds  
-no further argument

4:20:22 PM Ms White  
-defense said officer has to give notice of someone under arrest  
-except unless person is trying to escape  
-each officer placed hand, deft committed crime kicking, grabbing at officers  
-vascular restraint used to calm deft down, result of deft's escalation of assaults  
-notice not practical b/c of deft's actions  
-hands on arm, he started resisting  
-defense motion shd be denied

4:21:45 PM Ms Hiebert  
-exceptions for deadly force  
-vascular restraint is deadly force  
-assault occurred after he kneed Shorty

4:22:13 PM Court Findings  
-in the real life of contacting people  
-there was probable cause to stop and arrest Shorty for sexual assault based upon info police had  
-once contacted, Shorty was told to stop, talk, he came back  
-as he handed backpack to officer, and jacket, it was there impression their goal to tie up their hands so he could get away  
-false name, crime committed  
-hand on each arm, Shorty went bonkers and took them down, authority to use amt of force necessary to subdue him under the circumstances  
-appropriate to question him, suppressed that statement  
-don't find force unreasonable under circumstances  
-during melee calling for backup, asking people to call 911, difficulty for two officers to subdue Shorty and force he was using  
-it's not reasonable, argument w/o merit they shd somehow say he was under arrest  
**deny defense motions**

4:24:55 PM Ms Hiebert  
-at evid hrg, Wittee searched backpack as it sat on back of car  
-not simultaneously handing packs

Court  
-I stand by my findings

4:25:24 PM Court is recessed